

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Main Street America Assurance Company,	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	Case No. 2:21-cv-03977 (MAK)
	:	
Howard Lynch Plastering, Inc.	:	
	:	
and	:	
	:	
W.B. Homes, Inc.,	:	
	:	
<i>Defendants.</i>	:	

**JOINT STIPULATION OF FACTS  
AND AUTHENTIC DOCUMENTS**

Plaintiff Main Street America Assurance Company (“MSAAC”) and Defendant W.B. Homes, Inc. (“W.B. Homes”) hereby submit this Stipulation of Facts and Documents and Authentic Documents:

**DEFINITIONS**

- A. “Ashbourne Report” means the stucco inspection report for 926 Ashbourne Way.
- B. “Claims” means the claims brought by the 32 homeowners of single-family homes against W.B. Homes identified in paragraph 3 and footnote 1 of the Complaint for alleged construction defects at the Homes.
- C. “Complaint” means the complaint filed by MSAAC in the above-captioned action with ECF No. 1.
- D. “Desnoyers Arbitration” means the private arbitration brought by Rodwige and Camille Desnoyers against W.B. Homes in 2015.

E. “Desnoyers Complaint” means the complaint for private arbitration filed by Rodwige and Camille Desnoyers to commence the Desnoyers Arbitration, a copy of which is attached as Exhibit G to the Complaint.

F. “Etzler Documents” means the documents contained in Exhibit 12 which pertain to the work performed by Howard Lynch Plastering, Inc. on, the repairs made to, and the notification date of the alleged construction defects of the property located at 181 Wrenfield Way.

G. “Foxman Documents” means the documents contained in Exhibit 14 which pertain to the work performed by Howard Lynch Plastering, Inc. on, the repairs made to, and the notification date of the alleged construction defects of the property located at 890 Ashbourne Way.

H. “Guirguis Documents” means the documents contained in Exhibit 16 which pertain to the work performed by Howard Lynch Plastering, Inc. on the property located at Lot 1 in the Kingsley at Gwynedd development.

I. “Homes” means the 34 single family homes identified in paragraphs 3 and 4 of the Complaint.

J. “Howard Lynch” means Howard Lynch Plastering, Inc.

K. “Insurance Certificates” means the insurance certificates that Howard Lynch provided to W.B. Homes regarding its purchase of liability insurance.

L. “Jasinski Documents” means the documents contained in Exhibit 13 which pertain to the work performed by Howard Lynch Plastering, Inc. on, the repairs made to, and the notification date of the alleged construction defects of the property located at 190 Wrenfield Way.

M. “Joinder Complaint” means the complaint to join Howard Lynch that W.B. Homes filed in the McGinnis Lawsuit, a copy of which is attached as Exhibit F to the Complaint.

N. “Klaskin Documents” means the documents contained in Exhibit 15 which pertain to the work performed by Howard Lynch Plastering, Inc. on, the repairs made to, and the notification date of the alleged construction defects of the property located at 913 Ashbourne Way.

O. “McGinnis Complaint” means the initial complaint in the McGinnis Lawsuit, a copy of which is attached as Exhibit E to the Complaint.

P. “McGinnis Lawsuit” means the lawsuit captioned *William McGinnis and Rose Marie McGinnis v. W.B. homes, Inc., et al.*, Civil Action No. 2018-19272, which was filed on or about July 31, 2018, in the Court of Common Pleas of Montgomery County, Pennsylvania.

Q. “MSAAC Policies” means MSAAC policy number MPU2185F which was in effect for the policy periods November 1, 2011 to November 1, 2012; November 1, 2012 to November 1, 2013; and November 1, 2013 to November 1, 2014, certified copies of which are attached as Exhibits A, B and C to the Complaint.

R. “Pisoni Documents” means the documents contained in Exhibit 17 which pertain to the work performed by Howard Lynch Plastering, Inc. on, the repairs made to, and the notification date of the alleged construction defects of the property located at 398 Augusta Drive.

S. “Subcontract” means the “Agreement Between Contractor and Subcontractor” between Lynch and W.B. Homes dated March 19, 2008, a copy of which is attached as Exhibit D to the Complaint.

### **UNDISPUTED FACTS**

For the purposes of their summary judgment motion(s) only, MSAAC and W.B. Homes stipulate to the following undisputed facts, which may be contested at trial:

1. MSAAC issued the MSAAC Policies to Howard Lynch.
2. The homeowners' Claims and the claims alleged in the Legal Proceedings seek damages caused by the allegedly defective construction of the Homes.
3. The Desnoyers Arbitration was filed in November 2015, arbitrated in 2018, and ultimately settled without MSAAC's involvement.
4. Mr. and Mrs. Desnoyers arbitrated the Desnoyers Arbitration with W.B. Homes in 2018 and ultimately settled.
5. Mr. and Mrs. McGinnis filed the McGinnis Lawsuit against W.B. Homes and several of its affiliated entities in July 2018.
6. MSAAC received notice of the McGinnis Lawsuit from Nationwide Insurance Company in April 2020.
7. In May 2020, W.B. Homes and its affiliates filed the Joinder Complaint.
8. Howard Lynch was served with the Joinder Complaint in August 2020.
9. MSAAC has undertaken to defend Howard Lynch in the McGinnis Lawsuit and is currently defending Howard Lynch in the McGinnis Lawsuit.
10. Homeowners of the 32 Homes at issue in the Claims notified W.B. Homes of defective construction of the Homes between October 3, 2010, and March 23, 2018.
11. W.B. Homes remediated (or paid for remediation of) Homes at issue in the Claims from October 2010 through October 2019.
12. On January 31, 2020, W.B. Homes' insurance agent emailed MSAAC, informing MSAAC that W.B. Homes was seeking coverage for reimbursement of "significant expense" incurred by W.B. Homes to "repair property damage as a result of operations performed on several private residences by Howard Lynch."

13. The Ashbourne Report describes the property damage from which the Claim related to the property at 926 Ashbourne Way arises.

14. The property damage described in the Ashbourne Report is substantially similar to the property damage sustained at each of the Homes, both as to the nature of the property damage and the cause of the property damage.

15. Lynch substantially completed work on the property located at 181 Wrenfield Way on or about August 6, 2003, and the stucco inspection report (contained in the Etzler Documents) which describes the property damage from which the Claim related to the property at 181 Wrenfield Way arises is dated July 15, 2014.

16. Lynch substantially completed work on the property located at 190 Wrenfield Way on or about August 23, 2002, and the stucco inspection report (contained in the Jasinski Documents) which describes the property damage from which the Claim related to the property at 190 Wrenfield Way arises is dated January 12, 2013.

17. Lynch substantially completed work on the property located at 890 Ashbourne Way on or about August 21, 2006, and a communication from WB Homes to the homeowner dated July 3, 2014 (contained in the Foxman Documents) constitutes an acknowledgment from WB Homes that WB Homes would repair the property damage from which the Claim related to the property at 890 Ashbourne Way commencing on or shortly after July 3, 2014.

18. Lynch substantially completed work on the property located at 913 Ashbourne Way on or about January 5, 2007, and the stucco inspection report (contained in the Klaskin Documents) which describes the property damage from which the Claim related to the property at 913 Ashbourne Way arises is dated October 3, 2010.

19. Lynch substantially completed work on the property located at Lot 1 in the Kingsley at Gwynedd Development on or about October 21, 2005.

20. The homeowner of Lot 1 in the Kingsley at Gwynedd Development was paid a \$10,000 settlement by WB Homes in connection with the property damage from which the Claim related to that property in or about 2012.

21. Lynch substantially completed work on the property located at 398 Augusta Drive on or about January 7, 2013, and the stucco inspection report (contained in the Pisoni Documents) which describes the property damage from which the Claim related to the property at 398 Augusta Drive arises is dated February 27, 2017.

#### **STIPULATED DOCUMENTS**

MSAAC and W.B. Homes stipulate the documents below (i) are authentic, (ii) are business records kept in the ordinary course of business; and (iii) should the lawsuit proceed to trial, may be entered into evidence without either party having to move the documents into evidence through a witness:

- A. The MSAAC Policies. Appendix Exhibits 1–3.
- B. The Subcontract. Appendix Exhibit 4.
- C. The McGinnis Complaint. Appendix Exhibit 5.
- D. The Joinder Complaint. Appendix Exhibit 6.
- E. The Desnoyers Complaint. Appendix Exhibit 7.
- F. The Ashbourne Report. Appendix Exhibit 8.
- G. The Insurance Certificates. Appendix Exhibit 9.
- H. Correspondence between WB Homes and MSAAC. Appendix Exhibit 10.
- I. Summary of claims, subcontractors, and payouts. Appendix Exhibit 11.
- J. The Etzler Documents. Appendix Exhibit 12.

- K. The Jasinski Documents. Appendix Exhibit 13.
- L. The Foxman Documents. Appendix Exhibit 14.
- M. The Klaskin Documents. Appendix Exhibit 15.
- N. The Guirguis Documents. Appendix Exhibit 16.
- O. The Pisoni Documents. Appendix Exhibit 17.

Dated: January 25, 2022

Respectfully submitted jointly,

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*Attorneys for defendant W.B. Homes, Inc.*

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\* The attorney filing this joint statement has written permission from other signing counsel to sign the statement on his behalf.

**CERTIFICATE OF SERVICE**

I certify that on January 25, 2022, the foregoing document is being served this day via email on all parties that have appeared via this Court's CM/ECF system and via regular mail to:

**Howard Lynch Plastering, Inc.**  
c/o Doris Elizabeth Lynch  
31 Eagles Watch North  
Bechtelsville, Pennsylvania 19505

/s/ Richard J. Orr